

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

In re Patent Application of

BALE et al

Serial No. 09/830,271

Filed: April 25, 2001

Title: MESSAGING PLATFORM

Atty Dkt. CC-36-1441

C# M#

TC/A.U.: 2154

Examiner: A. Patel

Date: June 11, 2007



AFJ
JFW

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

☐ **Correspondence Address Indication Form Attached.**

☐ **NOTICE OF APPEAL**

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences
from the last decision of the Examiner twice/finally rejecting
applicant's claim(s).

\$500.00 (1401)/\$250.00 (2401) \$

☒ An appeal **BRIEF** is attached in the pending appeal of the
above-identified application

\$500.00 (1402)/\$250.00 (2402) \$ 500.00

☐ Credit for fees paid in prior appeal without decision on merits

-\$ ()

☐ A reply brief is attached.

(no fee)

☐ Petition is hereby made to extend the current due date so as to cover the filing date of this
paper and attachment(s)

One Month Extension \$120.00 (1251)/\$60.00 (2251)

Two Month Extensions \$450.00 (1252)/\$225.00 (2252)

Three Month Extensions \$1020.00 (1253)/\$510.00 (2253)

Four Month Extensions \$1590.00 (1254)/\$795.00 (2254) \$

☐ "Small entity" statement attached.

Less month extension previously paid on

-\$ ()

TOTAL FEE ENCLOSED \$ 500.00

Any future submission requiring an extension of time is hereby stated to include a petition for such time extension.
The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or
asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this
firm) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

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NIXON & VANDERHYTE P.C.

By Atty: Chris Comuntzis, Reg. No. 31,097

Signature: _____



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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APPEAL BRIEF

Sir:

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from
the last decision of the Examiner.

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(I) REAL PARTY IN INTEREST

The real party in interest is British Telecommunication public limited company, a corporation of the country of the United Kingdom.

(II) **RELATED APPEALS AND INTERFERENCES**

The appellant, the undersigned, and the assignee are not aware of any related appeals, interferences, or judicial proceedings (past or present), which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

(III) STATUS OF CLAIMS

Claims 18-38 are pending and have been finally rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent 6,366,780 issued to Obhan (hereinafter "Obhan"). The Examiner also finally rejected claims 30 and 31 under 35 U.S.C. § 101, but in the Advisory Action the Examiner implies that this rejection has been overcome by entry of Appellant's Amendment of March 8, 2007 for purposes of appeal and not re-asserting the § 101 rejection in the Advisory Action, dated April 6, 2007. No claims have been substantively allowed and all rejected claims are being appealed.

(IV) STATUS OF AMENDMENTS

No amendments have been filed since the March 8, 2007 Amendment filed in response to the Final Rejection. The Amendment of March 8, 2007 was entered by the Examiner for purposes of Appeal.

(V) SUMMARY OF CLAIMED SUBJECT MATTER

The invention of the claims relates to a messaging platform for use in a communications network. A listing of each independent claim is provided below including exemplary reference(s) to page and line number(s) of the specification.

18. A messaging platform including:

a message store arranged to receive message data and to store said message data for subsequent retrieval [Fig. 2; pg. 4, lines 19-20];

a control interface arranged to allow the communication of control signals between the messaging platform and a service provider [Fig. 2; pg. 4, lines 28-29]; and

an overload controller provided on the control interface and responsive to an overload condition of the platform and arranged, in response to the said overload condition, to limit loading of the platform by signals arriving on said control interface [Fig. 2; pg. 4, line 29 to pg. 5, line 6].

28. A messaging system comprising:

a service platform running a messaging service application; and a messaging platform comprising: a message store arranged to receive message data and to store said message data for subsequent retrieval [Fig. 2, pg. 4, lines 19-20];

a control interface arranged to allow the communication of control signals between the messaging platform and a service provider [Fig. 2, pg. 4, lines 19-20]; and

an overload controller provided on the control interface and responsive to an overload condition of the messaging platform and arranged, in response to the said

overload condition, to limit loading of the messaging platform by signals arriving on said control interface [Fig. 2, pg. 4, line 29 to pg. 5, line 6];

wherein said control interface is arranged to connect said messaging platform to the service platform, and said messaging platform is arranged to receive control requests from the service platform via said control interface.

32. A method of operating a messaging platform, the messaging platform comprising a message store arranged to receive message data and to store said message data for subsequent retrieval, a control interface arranged to allow the communication of control signals between the messaging platform and a service provider; and an overload controller provided on the control interface and responsive to an overload condition of the platform and arranged, in response to the said overload condition, to limit loading of the platform by signals arriving on said control interface, the method comprising:

- a) storing message data on the messaging platform [Fig. 2; pg. 4, lines 19-20];
- b) subsequently outputting message data from the platform, thereby allowing retrieval of a corresponding message [Fig. 2; pg. 4, lines 28-29];
- c) detecting an overload condition of the messaging platform; and, in response to the overload condition [Fig. 2; pg. 4, line 29 to pg. 5, line 1]; and
- d) limiting loading of the messaging platform by signals arriving on the control interface [Fig. 2, pg. 5, lines 1-6].

(VI) GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 18-38 are anticipated under 35 U.S.C. § 102(e) by Obhan.

(VII) **ARGUMENT**

It is well established in the patent law that for a reference to anticipate a claim, it must disclose each and every claim element, either expressly or under principles of inherency. The Examiner's citation of Obhan in rejecting claims 18-38 under 35 U.S.C. § 102(e) is in error because Obhan fails to disclose each and every claim element including, *inter alia*, the control interface and overload controller of the appealed claims.

The Examiner's 102(e) rejection of all claims over Obhan is in error. Appellant's inventions are directed to a messaging platform, i.e., for storing email or voice mail (see, *inter alia*, the present Title Of The Invention, Abstract and specification at page 1, lines 1-11), while the cited Obhan reference is clearly not directed to a messaging platform but instead is directed to methods for managing subscriber load of a wireless communication system, i.e., the loading of real time callers accessing the spectrum of the wireless communication system (see, *inter alia*, Obhan at the Title Of The Invention, Abstract, Technical Field at column 1, lines 14-20, and Summary Of The Invention at column 2, lines 36-46). While Obhan incidentally includes a messaging platform, as do virtually all wireless communication systems, it does not teach (or even suggest) the specific structural arrangement and operating methodology of the messaging platform recited in the present claims.

More particularly, Obhan is not directed to an improved messaging platform and hence does not teach (or suggest) the claimed structure or method of operation of Appellant's improved messaging platform which includes a control interface arranged to allow the communication of control signals between the messaging platform and a

service provider and an associated overload controller for limiting loading of the platform. The Examiner erroneously asserts that Obhan is directed to a messaging platform even though not a single claim mentions a messaging platform – the Examiner fails to grasp that just because a reference that is directed to the subscriber loading of a wireless communication system incidentally includes a messaging platform that does not mean that the messaging platform is the thrust of the reference. Moreover Obhan does not even identify the structures that comprise its messaging platform in any of its drawings or the text of the specification. For purposes of this appeal, Appellant has assumed that SMSC (Short Message Service Center) 322 comprises Obhan's messaging platform.

As will be discussed below SMSC 322 does not and cannot meet the limitations of the present claims as the “messaging platform.” Moreover, if SMSC 322 does not comprise Obhan's messaging platform, then the messaging platform components of Obhan have not been identified and it follows that Obhan, in this circumstance, cannot teach or even suggest Appellant's claimed arrangement of a messaging platform, control interface and overload controller.

The distinction between Appellant's inventions and Obhan is pointed out by the fact that the Title, Abstract and each and every claim of the present application are directed to a messaging platform while the Title, Abstract and each and every claim of Obhan do not even mention a messaging platform. It is hard to fathom how Obhan can be directed to an improved messaging platform yet not include a single claim that even mentions a messaging platform. Indeed, the portions of Obhan cited to by the Examiner either do not mention a messaging platform or only incidentally refer to the operation of

a conventional messaging platform when discussing the operation of the claimed subscriber loading system.

In discussing our prior response the Examiner at page 3 of the Final Office Action cites column 2, lines 35-60 of Obhan as supporting his conclusion that the reference is “managing the loading of a messaging platform.”

Thus, in order to overcome the above described shortcomings, among others, a Spectrum Yield Management (SYM) system and method of operation tracks spectrum usage in real-time. Spectrum usage is measured in both real-time usage (of active subscribers) and in potential usage (of inactive subscribers that have registered with the system). Based upon the actual subscriber loading levels, potential subscriber loading levels, historical loading levels and the system capacity, the SYM system performs operations that manage use of the available spectrum according to the operating goals of the system operator.

One particular operating goal of a system operator is to increase revenue generated by the system. To increase revenue generation from an installed wireless infrastructure, the SYM system manages the system operator's subscriber priorities and spectrum resource allocation priorities by dividing the coverage area into corridors and managing the unique demand and supply characteristics over each corridor. Depending on subscriber preferences, network usage patterns, competitive pressures and the regulatory environment, a system operator can deploy the SYM system in a variety of ways so that service incentives and service disincentives are provided so as to reach desired loading patterns. Further, using the same and similar techniques, a system operator may use the SYM system to shift load from one time period to another time period.

However, nowhere in the above cited portion of Obhan are the terms “messaging platform” to be found. It appears that the Examiner has erroneously assumed that the “loading of subscribers” is equivalent to the “loading of a messaging platform,” as that term is used in the present application. That the Examiner is incorrect is clear from the

totality of the passage which refers to real-time usage (of active subscribers) and in potential usage (of inactive subscribers that have registered with the system) and that the passage refers to “available spectrum” and not to the availability or accessibility of any messaging platform storage system such as mail boxes or the like.

The Examiner’s error in this regard is further evident in that Obhan’s conventional messaging platform is described with respect to Figures 13 and 14 and the specification at column 19, line 22 through column 21, line 12, which the Examiner never cites to in rejecting specific elements of the present claims. The Examiner’s passing reference to Fig. 14, with respect to claim 18, at page 11 of the Office Action, and citation to col. 19, lines 49-52, with respect to dependent claim 26, at page 16 of the Office Action do not teach or suggest any of the structural elements of claim 18. Instead, the Examiner cites to portions of Obhan which describe the operation of Obhan’s claimed methods for managing subscriber load of a wireless communication system and which have nothing to do with Applicants’ claimed features relating to an improved messaging platform.

Obhan simply does not teach or even suggest the structure and operation of Applicant’s messaging platform as was detailed in Appellant’s prior Amendment, dated September 22, 2006, at pages 11-17 which are hereby incorporated into this Response. Suffice it to say the Examiner has absolutely failed to identify any portion of Obhan which teaches (or even suggests) the structures and operations of present claims 18-38.

At page 5 of the Advisory Action, the Examiner concludes that “‘Obhan teaches loading of the messaging platform’ and not ‘the loading of subscribers.’” The Examiner’s analysis at pages 3-5 that preceded this conclusion is not only in error, but

beside the point. Appellant has repeatedly acknowledged that Obhan incidentally discloses a conventional messaging platform, so it is not surprising that the Examiner can cherry pick passages from Obhan to establish nothing more than Obhan incidentally discloses a conventional messaging platform. But to conclude that Obhan “teaches loading of the messaging platform and not the loading of subscribers” means that the Examiner in reaching his conclusion has ignored the Abstract, Technical Field, Summary of the Invention, Detailed Description of the Invention and Claims of Obhan. This constitutes clear error.

At page 6 of the Advisory Action, the Examiner finally identifies the “control interface a [sic] arranged to allow the communication of control signals between the messaging platform and a [sic] service providers [sic]” as ACB 330 (shown in Fig. 3 of Obhan). But ACB 330 of Obhan is not connected between the messaging platform, i.e., SMSC (short message service center) 322 and a service provider, i.e., the components of system 300, as required by all of the appended claims.

ACB 330 appears to be connected in parallel with SMSC 322 and is clearly not connected between SMSC 322 and a service provider. Moreover, the description of the ACB’s operation is as follows:

In the illustrated embodiment, the ACB 228 resides within a Service Control Point (SCP) 226 of the wireless communication system. By locating the ACB 228 within the SCP 226, operations according to the present invention may be more easily integrated into existing wireless communication systems. For example, in a wireless communication system that is constructed of components and software from various vendors and that supports Signaling System Seven (SS-7) operations, the SCP 226 will be accessed during call setup. Based upon the contents of the ACB 228 contained within the SCP 228, call setup may be altered (by preventing access to the system of particular

classes of subscribers or by queuing calls for other classes of subscribers) according to the present invention to manage spectrum within the wireless communication system. Such an implementation may be performed in a manner consistent with the structure and operation of a Wireless Intelligent Network (WIN). (Emphasis supplied.)

See, Obhan at col. 8, lines 24-40 and Fig. 2. Thus, ACB 228 which operates in the same way as ACB 330 of Fig. 3, is an interface that prevents system access to certain classes of subscribers, and has nothing to do with “allowing the communication of control signals between the messaging platform and a service provider” as required by the appealed claims.

At page 7 of the Advisory Action, the Examiner finally identifies “an overload controller” as SYM Server 324, but all of the appealed claims require that the overload controller be arranged, in response to the overload condition, to limit loading of the platform by signals arriving on the control interface. However, the “identified” overload controller of Obhan, i.e., SYM Server 324 is nowhere described in Obhan to limit loading on the messaging platform, i.e., SMSC 322, by signals arriving on the control interface, i.e., ACB 330, as required by all of the appealed claims.

The Examiner further erroneously states at page 7 of the Advisory Action “as shown in Fig. 3, elements 330 and 324, the overload controller 324 is provided on the control interface (330).” To the contrary the Examiner’s overload controller 324” and “interface 330” are shown as separate components in Fig. 3 (and also in Fig. 2 for that matter), and “interface 330” is actually shown to be contained in SCP (Service Control Point) 326. See Figs. 2-3 of Obhan. Thus, elements 324 and 330 of Obhan do not meet the structural arrangements recited in the present claims, for this reason as well.

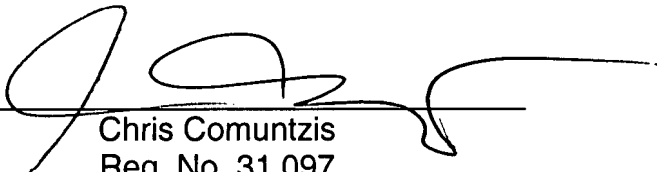
CONCLUSION

In conclusion it is believed that the application is in clear condition for allowance; therefore, early reversal of the Final Rejection and passage of the subject application to issue are earnestly solicited.

Respectfully submitted,

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(VIII) CLAIMS APPENDIX

18. A messaging platform including:
a message store arranged to receive message data and to store said message data for subsequent retrieval;

a control interface arranged to allow the communication of control signals between the messaging platform and a service provider; and

an overload controller provider on the control interface and responsive to an overload condition of the platform and arranged, in response to the said overload condition, to limit loading of the platform by signals arriving on said control interface.

19. A platform as in claim 18 wherein said control interface is arranged to receive control requests instructing transactions on the messaging platform, and wherein said overload controller includes means for denying at least some of the control requests in response to the overload condition.

20. A platform as in claim 18 further comprising:
an access controller arranged to receive data and control channels from one or more service providers and connected to said overload controller, wherein said overload controller limits loading of said platform by signals arriving on the control interface by functioning in combination with said access controller.

21. A platform as in claim 18 further comprising:
an access controller arranged to receive data and control channels form one or more service providers and connected to said overload controller, wherein said overload controller limits loading of said platform by signals arriving on the control interface by

functioning in combination with said access controller, wherein said overload controller functions in combination with said access controller to limit loading of said platform by signals arriving on the control interface by configuring the access controller to deny access to the platform of certain predetermined signals.

22. A platform as in claim 18 wherein said service provider comprises an end user.

23. A platform as in claim 18 wherein:
said control interface is arranged to receive control requests instructing transactions on the messaging platform,
said overload controller includes means for denying at least some of the control requests in response to the overload condition, and
said overload controller detects the rate of transactions between the access controller and a plurality of said service providers.

24. A platform as in claim 18 in which the overload controller is programmed with criteria for applying different classes of service to control requests received at the control interface and the overload controller is arranged, in response to an overload condition on the platform, selectively to deny control requests depending on a class of service assigned in accordance with the said criteria to the control request.

25. A platform as in claim 18 in which:
the overload controller is programmed with criteria for applying different classes of service to control requests received at the control interface;

the overload controller is arranged, in response to an overload condition on the platform, selectively to deny control requests depending on a class of service assigned in accordance with the said criteria to the control request, and

the criteria apply a class of service selected depending on the identity of a service provider originating the said control requests.

26. A platform as in claim 18 in which the overload controller is programmed with criteria for applying different classes of service to control requests received at the control interface and the overload controller is arranged, in response to an overload condition on the platform, selectively to deny control requests depending on a class of service assigned in accordance with the said criteria to the control request, and in which the criteria apply a class of service selected depending on the identity of a subscriber mailbox to which the control request applies.

27. A platform as in claim 18 in which the overload controller is programmed with criteria for applying different classes of service to control requests received at the control interface and the overload controller is arranged, in response to an overload condition on the platform, selectively to deny control requests depending on a class of service assigned in accordance with the said criteria to the control request, and in which the criteria apply different service classes depending on the transaction requested by the control request.

28. A messaging system comprising:

a service platform running a messaging service application; and a messaging platform comprising: a message store arranged to receive message data and to store said message data for subsequent retrieval;

a control interface arranged to allow the communication of control signals between the messaging platform and a service provider; and

an overload controller provided on the control interface and responsive to an overload condition of the messaging platform and arranged, in response to the said overload condition, to limit loading of the messaging platform by signals arriving on said control interface;

wherein said control interface is arranged to connect said messaging platform to the service platform, and said messaging platform is arranged to receive control requests from the service platform via said control interface.

29. A messaging system as in claim 28 in which the service platform is remote from the messaging platform.

30. A messaging platform as in claim 18 for use in combination with a communications network.

31. A messaging system as in claim 28 for use in combination with a communications network.

32. A method of operating a messaging platform, the messaging platform comprising a message store arranged to receive message data and to store said message data for subsequent retrieval, a control interface arranged to allow the

communication of control signals between the messaging platform and a service provider; and an overload controller provided on the control interface and responsive to an overload condition of the platform and arranged, in response to the said overload condition, to limit loading of the platform by signals arriving on said control interface, the method comprising:

- a) storing message data on the messaging platform;
- b) subsequently outputting message data from the platform, thereby allowing retrieval of a corresponding message;
- c) detecting an overload condition of the messaging platform; and, in response to the overload condition; and
- d) limiting loading of the messaging platform by signals arriving on the control interface.

33. A method as in claim 32 further comprising:

- e) receiving via the control interface of the message platform control requests instructing a transaction on the messaging platform, wherein the step of limiting loading of the platform includes denying at least some of the control requests received via the control interface access to the platform.

34. A method as in claim 32 further comprising:

- receiving via the control interface of the message platform control requests instructing a transaction on the messaging platform, wherein the step of limiting loading of the platform includes denying at least some of the control requests received via the control interface access to the platform;
- applying different classes of service to the control requests; and,

in response to the overload condition, selectively denying some only of the control requests depending on the class of service applied to the control requests.

35. A method as in claim 32 further comprising:

receiving via the control interface of the message platform control requests instructing a transaction on the messaging platform, wherein the step of limiting loading of the platform includes denying at least some of the control requests received via the control interface access to the platform;

applying different classes of service to the control requests; and, in response to the overload condition;

selectively denying some only of the control requests depending on the class of service applied to the control requests; and

applying different classes of service to control requests depending on the identity of an originating service provider.

36. A method as in claim 32 further comprising:

receiving via the control interface of the message platform control requests instructing a transaction on the messaging platform, wherein the step of limiting loading of the platform includes denying at least some of the control requests received via the control interface access to the platform;

applying different classes of service to the control requests; and, in response to the overload condition;

selectively denying some only of the control requests depending on the class of service applied to the control requests; and

applying different classes of service to control requests depending on identities of customer mailboxes to which the control requests apply.

37. A method as in claim 32 further comprising:

receiving via the control interface of the message platform control requests instructing a transaction on the messaging platform, wherein the step of limiting loading of the platform includes denying at least some of the control requests received via the control interface access to the platform;

applying different classes of service to the control requests; and, in response to the overload condition;

selectively denying some only of the control requests depending on the class of service applied to the control requests; and

applying different classes of service to control requests depending on the transaction requested by the control request.

38. A method as in claim 32 further comprising:

receiving via the control interface of the message platform control requests instructing a transaction on the messaging platform, wherein the step of limiting loading of the platform includes denying at least some of the control requests received via the control interface access to the platform;

applying different classes of service to the control requests;

in response to the overload condition, selectively denying some only of the control requests depending on the class of service applied to the control requests; and applying different classes of service to control requests depending on the transaction requested by the control request;

wherein the messaging platform includes:

a plurality of mailboxes containing message data, each mailbox being switchable between an open state, in which message data may be written to or read from the mailbox, and a closed state, and

in which the step of limiting loading includes allowing requests for the closing of a mailbox and denying requests for the opening of a mailbox.

(IX) EVIDENCE APPENDIX

None.

(X) **RELATED PROCEEDINGS APPENDIX**

None.